

used in lieu of the term “qualified business use” and has the same meaning as “qualified business use” under § 48.6421-1(b).

[T.D. 8043, 50 FR 32046, Aug. 8, 1985]

§ 48.6427-1 Credit or payments to purchaser of special fuels resold or used for nontaxable, farming, or other purposes.

(a) *Amount of repayment*—(1) *Nontaxable or other uses.* (i) If tax has been paid under section 4041(a)(1) on the sale of diesel fuel for use as a fuel in a diesel-powered highway vehicle or under section 4041(a)(2) on the sale of special motor fuel for use as a fuel in a motor vehicle or a motorboat and the fuel is used by the purchaser for a nontaxable purpose or for a purpose taxable at a lower rate than the purposes for which sold, a credit (under the circumstances described in paragraph (b) of this section) or a payment (under the circumstances described in paragraph (c) of this section) in respect of the fuel shall be allowed or made to the purchaser of the fuel in an amount equal to—

(A) The amount of the tax imposed on the sale of the fuel to the purchaser if the purchaser resells the fuel, or

(B) If the purchaser uses the fuel, the amount of tax imposed on the sale of the fuel to the purchaser, less the amount of tax, if any, that would have been imposed on the purchaser's use of the fuel if no tax had been imposed on the sale of the fuel to the purchaser.

(ii) For purposes of paragraph (a)(1)(i) of this section, and for the regulations under section 6427 applying such paragraph, tax imposed on the sale of fuel will be treated as an overpayment by the purchaser if the person resells the fuel or uses it for a nontaxable purpose or for a purpose taxable at a lower rate than that for which sold to the purchaser. Thus, for example, special motor fuel which was sold tax paid to the purchaser for use otherwise than in a qualified business use in a motor vehicle will qualify for the payment under section 6427 if the purchaser uses it as a fuel in a qualified business use.

(2) *Used for farming purposes.* (i) If tax has been paid under section 4041(a)(1) on the sale of diesel fuel for use as a fuel in a diesel-powered highway vehicle,

or under section 4041(a)(2) on the sale of special motor fuel for use as a fuel in a motor vehicle or a motor boat and the fuel is used on a farm for farming purposes, a credit (under the circumstances described in paragraph (b) of this section) or a payment (under the circumstances described in paragraph (c) (1) or (2) of this section) in respect of the fuel shall be allowed or made to the purchaser of the fuel in an amount equal to the amount of tax that was imposed under section 4041 on the sale of the fuel. The provisions of section 6420(c) (1), (2), and (3) and § 48.6420-4 shall apply under this paragraph (a)(2) in determining whether the fuel is used on a farm for farming purposes.

(ii) The term “purchaser,” as used in paragraph (a)(2)(i) of this section, includes only a person who is an owner, tenant, or operator of a farm. A person who is owner, tenant, or operator of a farm is a purchaser of fuel only with respect to such fuel as is purchased by the person and used for farming purposes on a farm of which the person is the owner, tenant, or operator. Thus, the owner of a farm who purchases fuel which is used on the farm by its owner, tenant, or operator for farming purposes is generally the purchaser of the fuel. If, however, the cost of fuel supplied by an owner, tenant, or operator of a farm, is by agreement or other arrangement borne by a second person who is an owner, tenant, or operator of the farm, the second person who bore the cost of the fuel is considered to be the purchaser of the fuel.

(iii) Except as provided in paragraph (a)(2)(iv) of this section, if fuel is used on a farm by any person other than the owner, tenant, or operator for the purposes described in section 6420(c)(3)(A) and § 48.6420-4(d) (relating to gasoline used in cultivating, raising, or harvesting), the owner, tenant, or operator (as the case may be) will be treated for the purposes of § 48.6427-1(a)(2)(i) as the purchaser who used the fuel on the farm for farming purposes.

(iv) Section 6427(c) provides that an aerial applicator or other applicator is entitled to be treated as the user and ultimate purchaser of fuel that the applicator uses on a farm for the purposes described in section 6420(c)(3)(A), but

only if the owner, tenant, or operator of the farm who is otherwise entitled to be treated as the ultimate purchaser waives the right to credit or payment. The rules contained in section 6420 and the regulations under the section regarding waivers by owners, tenants, and operators of farms of their rights to payments under section 6420 for gasoline used by aerial applicators on a farm for farming purposes apply to waivers under this section.

(3) *Definitions, uses, and other rules.* (i) No interest shall be paid on any payment allowed under paragraph (c) of this section. However, interest may be paid on any overpayment (as defined by section 6401) arising from a credit. See section 34(a), relating to credit for certain uses of gasoline and special fuels. See section 39(a) of the Internal Revenue Code of 1954 prior to its revision by the Highway Revenue Act of 1982, relating to credit for certain uses of lubricating oil. See section 6611, relating to interest on overpayments.

(ii) See § 48.6427-3 for the time within which a claim for credit or payment must be made under this section.

(iii) See § 48.6420-4 for the meaning of the terms “used on a farm for farming purposes” and “farm.” The term “gasoline” has the same meaning given to this term by section 4082(b) and the regulations thereunder. For the meaning of the terms “diesel fuel,” “special motor fuel,” “motor vehicle,” “highway vehicle,” and “registered” see section 4041 and the regulations thereunder. The term “fuel” means diesel fuel, special motor fuel, or gasoline, as the context requires. Where appropriate, the term “use” includes a resale. See § 48.6421-4 for the meaning of “calendar quarter” and “taxable year”.

(iv) For purposes of determining the allowable credit or payment in respect of fuel used for nontaxable purposes, on a farm for farming purposes, or for purposes taxable at a lower rate, fuel on hand shall be considered used in the order in which it was purchased. Thus, if the purchaser made purchases at different times and subject to different rates of tax, then in determining credit or payment for fuel used for a described purpose, it will be assumed that the fuel first purchased was the first fuel used, and the rate applicable to that

purchase will apply in determining the credit of payment, until all of that fuel is accounted for.

(v) Fuel lost or destroyed through spillage, fire, or other casualty is not considered to have been “used” within the meaning of this section, and, accordingly, no credit or payment of the tax paid on the sale of the fuel may be made under this section.

(b) *Allowance of income tax credit in lieu of payment.* Except as provided in paragraph (c) of this section, repayment under this section of the tax paid under section 4041 on fuel used by a person subject to income tax may be obtained only by claiming a credit for the amount of this tax against the tax imposed by subtitle A of the Code. The amount of the credit shall be an amount equal to the payment which would be made under section 6427 with respect to fuel used during the taxable year for nontaxable purposes on a farm for farming purposes, or for purposes taxable at a lower rate, if section 6427(i) and paragraph (c) of this section did not apply. See section 34(a)(3).

(c) *Allowance of payment.* Payments in respect of fuel upon which tax was paid under section 4041 that is used for nontaxable purposes, on a farm for farming purposes, or for purposes taxable at a lower rate, shall be made only to—

(1) The United States or any agency or instrumentality thereof, a State, a political subdivision of a State, or an agency or instrumentality of one or more States or political subdivisions of a State, or the District of Columbia,

(2) An organization which is exempt from tax under section 501(a) and is not required to make a return of the income tax imposed under subtitle A for its taxable year, or

(3) In the case of fuel used for nontaxable purposes to which section 6427(a) applies, to a person described in section 6427(g)(2) to whom \$1,000 or more is payable (without regard to paragraph (b) of this section) under this section with respect to fuel used during any of the first three quarters of his taxable year.

(d) *Dual use of fuel.* The principles set forth in § 48.4041-7, relating to dual use of fuel, for determining whether liability is incurred under section 4041 at the

Internal Revenue Service, Treasury

§ 48.6427-2

time of sale of the fuel, are equally applicable in determining whether a credit or payment is to be allowed under this section. Thus, if diesel fuel or special motor fuel used in a separate motor is drawn from the same tank as the one which supplies fuel for the propulsion of the vehicle, a reasonable determination of the quantity of the fuel used in the separate motor will be acceptable for purposes of computing the payment or credit under this section. The determination must be based, however, on the operating experience of the person using the fuel, and a statement, signed by the person, evidencing the operating experience must be maintained as a part of the records of the person claiming the payment or credit.

(e) *Supporting evidence required.* Each claim under this section for credit or payment must include a statement showing—

(1) The total number of gallons of fuel purchased and used for nontaxable or farming purposes during the period covered by the claim, multiplied by the rate of payment allowable under this section with respect to such fuel;

(2) The purpose or purposes for which the fuel was used, determined by reference to general categories, and the amount used for each of the purposes; and

(3) If a claim on Form 843 is being filed, the internal revenue district or service center with which the claimant last filed an income tax return, (if any).

(f) *Illustrations.* The application of this section may be illustrated by the following example:

Example. Special motor fuel was sold for use as fuel in a highway vehicle that was registered for highway use. Tax was imposed on the sale at the rate of 9 cents a gallon under section 4041(a)(2). The special motor fuel was eventually used by the purchaser in a qualified business use. The credit or payment of tax is to be computed as follows:

	Cents per gal- lon
Rate at which tax was paid	9
Less: Rate at which tax would have been imposed on a qualified business use under sec. 4041(b).	0
Net credit or payment under sec. 6427(a)	9

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§ 48.6427-2 Credits or payments to purchaser of diesel or special motor fuels used in intercity, local, or school buses.

(a) *In general.* (1) If tax has been paid under section 4041(a)(1) on the sale of diesel fuel for use as a fuel in a diesel-powered highway vehicle or under section 4041(a)(2) on the sale of special motor fuel for use as a fuel in a motor vehicle or a motorboat and the fuel is used by the purchaser in an intercity or local bus while engaged in furnishing (for compensation) passenger land transportation available to the general public or in a school bus in the transportation of students and employees of schools, a credit (under the circumstances described in paragraph (b) of this section) or a payment (under the circumstances described in paragraph (c) of this section) in respect of the fuel so used shall be allowed or made to the purchaser of the fuel. The credit or payment under this section shall be an amount equal to the product of the number of gallons of fuel so used multiplied by the rate at which tax was imposed on the fuel by section 4041(a)(1) or section 4041(a)(2), reduced as limited by section 6427(b)(2). No interest shall be paid on any payment allowed under paragraph (c) of this section. However, interest may be paid on any overpayment (as defined by section 6401) arising from a credit. See section 34(a), relating to credit for certain uses of gasoline and special fuels, (and lubricating oil prior to January 7, 1983). See section 6611, relating to interest on overpayments. See § 48.6427-3 for the time within which a claim for credit or payment must be made under this section.

(2) The terms “diesel fuel” and “special motor fuel” have the same meaning as in section 4041 and the regulations thereunder. The term “fuel” means diesel fuel and special motor fuel. See § 48.6421-4 for the meaning of “calendar quarter” and “taxable year.”

(b) *Allowance of income tax credit.* Except as provided in paragraph (c) of this section, repayment under this section of the tax paid under section 4041(a)(1) or section 4041(a)(2) on diesel